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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/243,869 02/03/99 SWINDELL

H 5451

EXAMINER

PM82/0524

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KENT, C

ART UNIT

PAPER NUMBER

3635

DATE MAILED:

05/24/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/243,869**

Applicant(s)  
**Harold L. Swindell III**

Examiner  
**Christopher T. Kent**

Group Art Unit  
**3635**



☒ Responsive to communication(s) filed on Feb 3, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-17 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-17 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3, the terminology "or any other platform" renders the limits of the claim indefinite.

Also in claim 1, the limitation "the base member extending upwardly from said support surface" results in the scope of the claim being inconsistent since the "support surface or platform" has not been positively recited as an element of the combination. As understood, only the safety railing, the access hatch and base member have been set forth as a claimed portion of the invention. The use of terminology such as "adapted to extend from said horizontal support surface" is suggested.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-5, 10, 11 and 16, as understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Lorentz, U.S. Patent Number 5,931,258. Lorentz teaches a combination of and access hatch (atop the manhole) and a safety railing (30), comprising an access hatch having a base member (14), the base member adapted to extend from a building or platform (10); the safety railing including left and right poles (30) each having a handle (34), an elongated vertical section (30), and a bracket (36a) including two extension flanges joined together (see Figure 2a) attached to the vertical section; with the bracket attached to the base member (through arm 22).

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***Allowable Subject Matter***

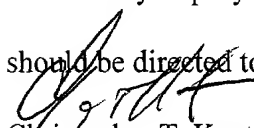
Claims 6-9; 12-15 and 17, as understood, would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. This holding of allowable subject matter is provisional and is subject to reconsideration upon the receipt of claims which are in compliance with 35 USC 112, second paragraph.

The prior art of record lacks the claimed combination including features specific to each claim indicated as containing allowable subject matter.

***Citation of Relevant Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Peebles and Murray teach combinations relevant to Applicant's disclosed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Kent whose telephone number is (703) 308-2497.

  
Christopher T. Kent  
Primary Examiner

CHRISTOPHER T. KENT  
PRIMARY EXAMINER

Technology Center 3600  
May 20, 2000